

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES KALISZUK,

Plaintiff,

v.

Case No. 2:21-cv-11572
District Judge Sean F. Cox
Magistrate Judge Anthony P. Patti

SILVER MAPLES OF
CHELSEA,

Defendant.

/

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION TO STRIKE AFFIRMATIVE DEFENSES (ECF No. 8)**

This matter came before the Court for consideration of Plaintiff's motion to strike affirmative defenses (ECF No. 8), Defendant's response in opposition (ECF No. 11), and Plaintiff's reply (ECF No. 12). Judge Cox referred this motion to me for a hearing and determination. (ECF No. 9.)¹ A hearing was held on November 1, 2021, at which counsel appeared and the Court entertained oral argument regarding the motion.

¹ As such, the Undersigned will decide the motion by order rather than report and recommendation. *See* 28 U.S.C. § 636(b)(1)(A) (does not list a motion to strike affirmative defenses as a motion which cannot be referred to a magistrate judge for hearing and determination); *Singh v. Superintending School Committee*, 593 F. Supp. 1315, 1318 (D. Maine 1984) (Court held motion to strike the plaintiff's claim was properly acted upon by the magistrate judge under 28 U.S.C. § 636(b)(1)(A) because not one of the pretrial motions excepted from referral).

Upon consideration of the motion papers and oral argument, and for all of the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, Plaintiff's motion to strike (ECF No. 8) is **GRANTED IN PART** and **DENIED IN PART** as follows:

- Affirmative Defense Nos. 2 and 8 are **STRICKEN WITHOUT PREJUDICE** for having no good faith basis under Rule 11(b), as was established on the record.
- The Court will **NOT STRIKE** Affirmative Defense Nos. 9 and 11, as both are subject to further development through discovery and it would thus be premature to strike them, with the Court further noting that the after-acquired evidence defense (No. 11) potentially remains in play through trial.
- Affirmative Defense No. 13 is **STRICKEN WITH PREJUDICE**, as it is not an affirmative defense, but without prejudice to asking the same question in the form of discovery requests or in deposition.

IT IS SO ORDERED.

Dated: November 1, 2021

APR. 2

Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE